

REPRESENTATIVE



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MISSOURI HOUSE OF REPRESENTATIVES



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Budget
Workers' Compensation
Transportation
Utilities Regulation

January 10, 2001

Honorable Jim Kreider
Speaker
Missouri House of Representatives
Capitol Building, Room 308
Jefferson City, Missouri 65101

Dear Speaker Kreider:

Attached is a copy of the Report by the House Interim Committee on Tax Increment Financing. Per appointment and direction, the House Interim Committee studying Tax Increment Financing has met, taken testimony, deliberated, and concluded its study on tax increment financing in Missouri.

The members of the committee are pleased to submit the attached report.

Sincerely,

Handwritten signature of Timothy P. Green in black ink.

TIMOTHY P. GREEN
Co-Chairman

Handwritten signature of Henry Rizzo in black ink.

HENRY RIZZO
Co-Chairman

Attachment

**REPORT OF THE
HOUSE INTERIM COMMITTEE
STUDYING TAX INCREMENT FINANCING**

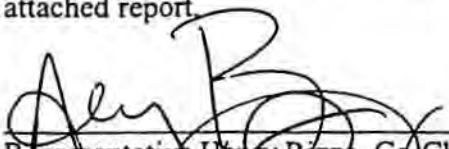
December 2000

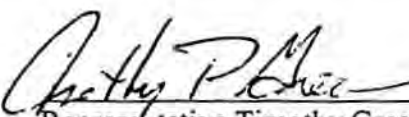
December 20, 2000


The Honorable Steve Gaw
State Capitol
Jefferson City, MO 65101

Dear Mr. Speaker:

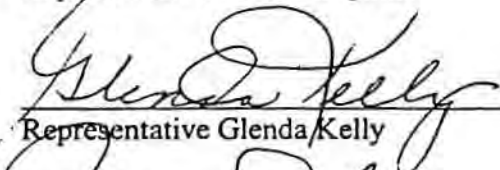
Per your appointment and direction, the House Interim Committee Studying Tax Increment Financing has met, taken testimony, deliberated, and concluded its study on tax increment financing in Missouri. The undersigned members of the Committee are pleased to submit the attached report.


Representative Henry Rizzo, Co-Chair



Representative Timothy Green, Co-Chair

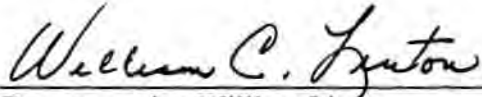

Representative Amber Boykins

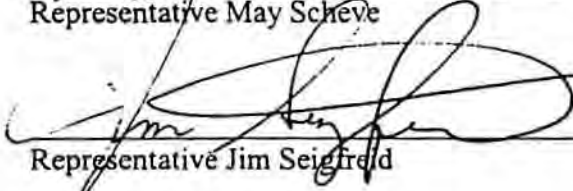

Representative Gary Burton

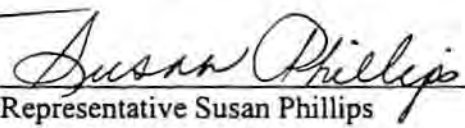

Representative Glenda Kelly

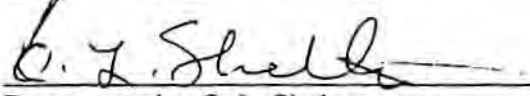
Representative Mike Gibbons

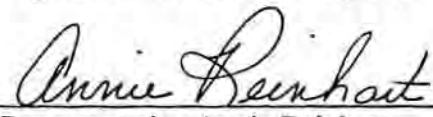

Representative May Scheve

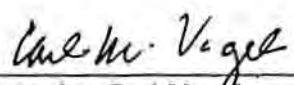

Representative William Linton


Representative Jim Seigfried


Representative Susan Phillips


Representative O. L. Shelton


Representative Annie Reinhart


Representative Carl Vogel

List of Witnesses

St. Louis Hearing - 11/1/00

1. Les Sterman, East-West Gateway Coordinating Council
2. Tom Curran, St. Louis County
3. Senator Wayne Goode
4. Sam Rauls, Jefferson County Presiding Commissioner
5. Timothy M. Wilkinson, City of St. Peters
6. Judy Davidson, United Food & Commercial Workers Union, Local 655
7. Tim Fischesser, St. Louis County Municipal League
8. Joe Ortworth, St. Charles County
9. Thomas P. Stoff, City of St. Louis Treasurer's Office
10. Kelley John Isherwood
11. Leon Steinbach, Hazelwood Yellow Ribbon Committee
12. Leigh Walton, St. Louis Regional Chamber & Growth Association
13. Kenneth P. Thomas
14. Sandy Rothschild, Missouri Growth Association

Kansas City Hearing - 11/30/00

15. Mayor Barnes
16. John Loss, TIF Commission Member
17. Barbara Pendleton, TIF Commission Member
18. Terence Ward, Kansas City EDC
19. Pam Mason, Clay County
20. Steve Taylor, DST Realty, Inc.; Downtown Council
21. Kevin Kelley, Convention and Visitors Bureau
22. Spencer Fields, Northland Regional Chamber of Commerce
23. Karen Salsbury, Clay County Economic Development Council
24. Burdette Fullerton, Platte County Economic Development Council
25. Robert L. Frye, Kansas City EDC
26. Peter Yeloda, TIF Commission
27. John Crawford, Kansas City TIF Commission
28. Rowena Conklin, Cooperating School Districts of the Suburban KC Area
29. Bill Snower, Greater Kansas City Chamber of Commerce
30. William Moore, City of Independence

Written testimony received on 12/20/00 from Gary Sharpe, Missouri Association of School Administrators

Report of the House Interim Committee on Tax Increment Financing

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In September, 2000, The Speaker of the House established the House Interim Committee on Tax Increment Financing and charged the Committee with examining the effectiveness problems of tax increment financing (TIF), and to determine what, if any, changes should be recommended to improve this program. The Speaker appointed the following House Members to the Interim Committee:

Representative Henry Rizzo, Co-Chair

Representative Gary Burton

Representative Timothy Green, Co-Chair

Representative Mike Gibbons

Representative Amber Boykins

Representative William Linton

Representative Glenda Kelly

Representative Susan Phillips

Representative May Scheve

Representative Annie Reinhart

Representative Jim Seigfreid

Representative Carl Vogel

Representative O. L. Shelton

The Interim Committee held public hearings at the following locations:

November 1, 2000

St. Louis, Missouri

November 30, 2000

Kansas City, Missouri

December 14, 2000

Jefferson City, Missouri

I. OVERVIEW OF TAX INCREMENT FINANCING

Missouri's Tax Increment Financing Law (TIF), first enacted in 1982 as the "Real Property Tax Increment Allocation Redevelopment Act", was designed as a tool for redeveloping certain dilapidated, neglected, undeveloped, or economically vulnerable areas. Redevelopment costs are paid for by the increased revenues generated in the TIF area from the redevelopment, and may consist of enhanced property tax revenues or "economic activity taxes", such as revenues from sales taxes generated within the TIF project area. The TIF Act has been amended a number of times in the past 15 years to make the Act more effective as a local economic development tool and to ensure public participation in the process of approving or not approving proposed TIF projects. These changes include allowing for the development of economic development areas and development within enterprise zones; allowing certain local sales and use taxes, and state sales taxes and new employee state withholding taxes in certain TIF projects, to be used to finance TIF projects; requiring the establishment of a TIF Commission comprised of representatives of the affected municipalities and taxing districts to make recommendations about TIF proposals and to oversee local TIF projects; requiring a cost-benefit analysis on TIF projects; requiring the Department of Economic Development to provide technical and informational assistance to local jurisdictions using TIF; and requiring developers to submit a signed affidavit attesting their project meets the "but-for" test. The "but-for" test is outlined in state statutes, and specifies that a finding must be made that the development or redevelopment is unlikely to occur unless tax increment financing is made available.

Communities across the state have used TIF for a variety of development and redevelopment

projects during the nearly 20 years this economic development tool has been available.

However, the vast majority of TIF projects have been approved in the major metropolitan areas including and surrounding Kansas City and St. Louis. Because of the concentration of TIF projects in these two metropolitan areas, the House Interim Committee focused much of its attention on evaluating the effectiveness and problems with the implementation of TIF in these areas. Following is a discussion of the issues and recommendations presented to the House Interim Committee through testimony at the three public hearings.

II. ISSUES AND RECOMMENDATIONS PRESENTED TO THE COMMITTEE

Recommendations for changing or improving the Tax Increment Financing program ranged from calls to abolish the program entirely to making no changes in what some describe as the most important economic development tool available to local municipalities. Those calling for the program to be abolished argued that the use of sales taxes for TIF projects violates the state constitution, as public funds are being used for private purposes (see Article III, section 38(a) of the Missouri Constitution). Others who requested that the Interim Committee endorse no changes in the program urged the Committee to not recommend "overzealous reforms" that would negatively impact the abilities of cities and other jurisdictions to improve the economic viability of their communities. The vast majority of testimony, however, centered around recommendations for making select changes in specific aspects of the TIF statutes, but leaving the essential components of the program in its present form. Following is a summary of the specific issues presented to the House Interim Committee.

1. Differences in the Experience with TIF in Kansas City and St. Louis - Perhaps the most significant issue presented to the Interim Committee through public testimony is the differences found between the Kansas City and St. Louis metropolitan areas in their experiences with and implementation of TIF. Overwhelming support was voiced to the Interim Committee from those testifying about the experiences with TIF in the Kansas City area. Typical of these sentiments is the testimony from the Mayor of Kansas City who testified that

"Tax increment financing is the optimal economic development tool in our community. It allows the public sector to maintain control of development projects, yet provides a great deal of flexibility, both for the public sector and the developer. Perhaps more importantly, the process offers opportunities for all those affected, including taxing districts, the public and the business community, to work together to develop the most favorable and advantageous opportunities for everyone. Additionally, it allows us to work within a finance structure that otherwise would not exist."

Similarly, a representative of the St. Joseph Area Chamber of Commerce urged the Interim Committee to keep TIF in its current form and wrote that

"If the TIF legislation is weakened, our ability to pursue economic development opportunities for the Kansas City area and the State of Missouri will be weakened."

Other testimony suggests that in the majority of the TIF projects in the Kansas City area, an independent evaluation is obtained to ensure that the "but-for" test is met. In addition, area TIF Commission members were praised for their efforts in developing good working relationships with all taxing districts affected by a proposed TIF project, an example of which includes often deferring to the recommendations of affected taxing districts if they are especially impacted by a proposal. Many of the Kansas City area TIF projects described for the Interim Committee involve "pay-as-you-go" financing, a financing strategy that has comparatively less negative

economic impact on local taxing districts and jurisdictions than the issuance of bonds which can be authorized for up to 23 years. Witnesses representing the Kansas City experience with TIF described the value it has in obtaining needed infrastructure improvements, especially in the central core area of the city, and in developing and rehabilitating housing.

The only major criticisms of TIF from those testifying who represent the Kansas City area involve the impact TIF projects can have on school districts. While absolute opposition to specific TIF projects from school district representatives was not expressed, these representatives did note that increasing development, especially when that development involves housing, can increase the burdens and demands on local schools. Generally, revenues do not increase to compensate schools for increased demands, especially if the school is located in a "hold harmless" district. In addition to providing training for school board members so they understand the impact of TIF, these representatives also recommended that changes be made in the law so that revenue enhancements from increases in property tax revenues available when TIF projects are completed not cause a corresponding decrease in the amount of public funds awarded to these districts.

In contrast, the assessment of TIF from those testifying from the St. Louis area was far less positive, and generally contained recommendations to the Interim Committee to make substantial changes in one or more aspects of the TIF program. Much of this difference in assessments is no doubt due to the political and geographical differences found between the two metropolitan areas. Of most importance is the large number of municipalities and jurisdictions, over 90,

within the St. Louis area, which are in close physical proximity to one another and among whom there is competition for jobs, economic development, and preservation or enhancement of the tax base (see Item 2 below). Much of the following discussion is based on the testimony of those representing the St. Louis area.

2. Competition and Bidding Wars - Some witnesses, especially those living and working in the St. Louis area, described the competitive tensions that the use of TIF creates between and among municipalities, and between the state of Missouri and its neighboring states. These tensions were described as creating "bidding wars" between localities which feel the need to preserve their tax base and job creation abilities. The municipalities which successfully "win" development through the approval of TIF projects were described as "robbing" the unsuccessful municipalities of public revenues needed to adequately provide public services. One witness described the St. Louis area as an area of "mall wars", where jobs and public revenues are "pirated" away from certain areas, especially the central core area of St. Louis City. Another witness suggested the Interim Committee consider adopting a requirement found in the Indiana statutes, which mandates that the jurisdictions which are successful in competing for TIF projects pay back a certain percentage of any "lost" revenues to taxing districts negatively impacted by a TIF project.

3. Strengthen "Blight" and the "But-for" Requirement - One of the criteria an area can meet in order to qualify for TIF is "blight", which is generally defined in the state statutes as unsafe or defective infrastructure or conditions which threaten health, safety, morals, or welfare. Several witnesses testified that the definition of "blight" as a qualifying condition has been

diluted by municipalities' interpretation and use of TIF, and that it has over the years become more or less meaningless. Other witnesses testified that the TIF program has evolved beyond its original intent because there are no repercussions from not following the statutory definition of "blight". One witness urged the Interim Committee to consider making changes in the statutes to specify who has the burden of proof for showing if "blight" exists, and suggested that one or more of the criminal law standards of proof (preponderance of the evidence, clear and convincing evidence, or evidence beyond a reasonable doubt) be considered as appropriate standards for showing compliance with the TIF statutes.

Similarly, testimony was presented calling for strengthening the "but-for" requirement, as some municipalities do not take this requirement seriously. One witness suggested that the use of independent evaluators to determine whether the developers have met this requirement, as is typical for many of the TIF projects approved in the Kansas City area, be a mandatory component for the use of TIF anywhere in the state.

4. Retail - An issue that elicited considerable testimony involves the use of TIF for retail establishments. Concern was voiced to the Interim Committee that the biggest abuses of TIF involve the approval of TIF for retail development and redevelopment. These projects, it was argued, typically do not meet the "but-for" test, and the public subsidies to developers have been largely responsible for the bidding wars typical in the St. Louis metropolitan area. Several witnesses testified that most of the problems with TIF are not just its use for retail, but its use in "big box" retail, that is awarding public subsidies through TIF to the large, nationwide chains

which then are often able to diminish the economic viability of smaller businesses in the area. However, some individuals testified that retail development has significant benefits for local communities, and argued against any restrictions on the use of TIF for retail establishments.

5. Type of Businesses and Jobs - Several witnesses recommended that the statutes be changed to require that any projects financed through TIF be required to create "good" jobs, that is jobs which pay sufficient wages and provide sufficient benefits to afford a reasonable quality of life for the employees. Along with job creation and wage standards for TIF projects, suggestions were made that companies benefitting from TIF be assessed for their businesses practices and "morals". Finally, the Interim Committee was urged to concentrate any TIF reforms on ensuring that there is fairness for small businesses, who often are "out competed" through the public subsidies more easily achieved by their larger competitors.

6. Citizen Involvement - While there is a requirement that public hearings be held prior to the approval of local TIF projects, several of those testifying recommended that more citizen involvement in the approval process be codified in state law. Suggestions for increasing citizen involvement included requiring a popular vote on some aspects of TIF projects, and requiring community-wide referenda on TIF projects which exceed a certain dollar amount.

7. Increased State Oversight - TIF is a local economic development tool, with approval and implementation authorized for municipalities. While the parameters for its use are established in state statute, the state has no role in the use of TIF, except for certain so-called

"super-TIF" projects. Given the abuses in implementing TIF that some witnesses reported and the bidding wars that some described as increasingly characteristic of the St. Louis metropolitan area, the Interim Committee was urged to make changes in the statutes requiring an enhanced state role in the oversight of TIF. One specific change that was suggested involves requiring state approval on major TIF projects which exceed a certain dollar amount.

8. Super-TIF Commission - One recommendation for helping to resolve the bidding wars and competitive disputes that sometimes arise among municipalities in the St. Louis area is to provide in the state statutes for the establishment of a "super-TIF" Commission, for approval and oversight on projects above a certain dollar amount. Such a Commission would operate much the same as existing TIF Commissions, would consist of representatives of the various municipalities and taxing districts in the greater St. Louis metropolitan area, and could be used to make recommendations about TIF projects for which neighboring jurisdictions or municipalities have significant opposition.

Case summary of JG St. Louis West L.L.C. et. al. v. City of Des Peres et. al.

As part of the demonstration of the potential problems with TIF and with the approval of certain TIF projects, particularly in the St. Louis area, the committee points to the case of JG St. Louis West v. City of Des Peres, 2000 WL 1617757 (Mo. App. E.D.) (n.b. this opinion is not yet officially published and is subject to potential further appeal). The court's ruling in this case, as the committee wishes to point out, attests to both the broad statutory authority given to local governments for TIF approval, and to the deference courts will give to local governments once a

TIF decision is made.

This case developed after the city of Des Peres decided to use TIF funds to redevelop West County Center by putting in a new Nordstrom department store, a new parking structure, and new or remodeled stormwater, water and sewer services for the mall. A rival mall, Chesterfield Mall, led the group suing to prevent the use of TIF in this case, stating that: 1) the area was not "blighted"; 2) the "but for" test, which requires that development would not reasonably be anticipated without a TIF, was not met; and 3) a private parking garage cannot be built using TIF. On all three issues, the court upheld the city of Des Peres' right to use TIF.

In its decision on the first two points (i.e. "blight" and the "but for" test), the court was directly reviewing the city board. In this review, the court stated that as long as an approval for TIF funds: 1) is not arbitrary or fraudulent; and 2) is "fairly debatable", that is to say, supported by some sort of substantive evidence or testimony; then the court would uphold any such approval. The court may have had doubts as to whether or not the project really needed TIF, but it would not substitute its beliefs about TIF in lieu of those of the city, saying: "While we acknowledge [the] argument that it is illogical to label as an economic liability, a commercial enterprise that is indisputably [Des Peres'] greatest economic asset, we are mindful of our standard of review... we will not substitute our judgment for that of the board if its decision as to blighting is fairly debatable. We find that it is." (JG St. Louis West v. City of Des Peres, 2000 WL 1617757, 3). Thus, the city's testimony regarding an aging mall infrastructure and an obsolete layout would make the issue fairly debatable, and the city's decision would be allowed to stand. On the final point (i.e. the parking garage issue), the court quickly determined that a parking garage would be

included as a "reasonable and necessary cost" of a redevelopment project, and thus met the statutory requirement for an eligible cost pursuant to section 99.805, RSMo.

In short, the court felt that it lacked authority to make determinations about specific TIF cases. As the court reaffirmed in this case, the subjective standards in the definitions of "blight" and in the "but for" test place authority with the governing bodies to determine what is or is not blight, as well as what projects would or would not be developed without TIF.

COMMITTEE FINDINGS AND RECOMMENDATIONS

The following are problems and concerns related to the Tax Increment Financing Program identified by the Committee. Many of the concerns are related to specific geographic areas of the state and may not apply to the entire state. Some concerns relate specifically to the Kansas City or St. Louis area while others may relate to smaller cities and towns.

1. Use of tax increment financing to foster development of residential structures and subdivisions. The committee identified the possible need to limit the use of TIF for certain types of residential development. The main concern is related to the loss or delay of property tax base from the residential TIF's and the effect on the revenues of the local school districts. If more students result from the residential development and the district receives little if any additional property tax revenues, this places a financial burden on the associated school district. It especially presents problems for "hold harmless" school districts. The committee clearly indicated that this problem is of particular concern in cases of new construction.

2. Use of tax increment financing to attract the development of large discount retailers.

The committee identified the possible need to limit or to seek additional community input on approval of TIF projects for large retail outlets. The concern relates to the demise of small family-owned retail businesses that sometimes result from these large retailers' dominance of the local marketplace. The committee voiced concern that using TIF for these types of projects is not fair to the small local retail businesses. This problem mainly occurs in smaller cities and towns.

3. Tax increment financing used to precipitate the movement of businesses from one location to another within the same region. The committee expressed concerns with the use of TIF to pursue the relocation of existing businesses from one community to another within the same geographic region. Further, proposed TIF redevelopment can produce competitive bidding wars over tax revenues among adjacent jurisdictions. The committee suggested the possible development of regional TIF cooperation districts to provide regional input into the approval of area projects.

4. Lack of state oversight of local TIF project approvals. The committee suggested the possible creation of a state TIF review commission to provide oversight over the local TIF projects. Such oversight could be limited to ensuring that local TIF projects meet criteria specified in state statutes. With local projects needing the approval of this state commission, it may spurn regional cooperation and provide standardization among the various local TIF Board recommendations. It was also a voiced concern of the committee that state projects may sometimes overlap with local TIF projects. This oversight commission, with input from state agencies, may help avoid these overlap situations.

5. State standards of TIF program elements are unclear. The findings of a recent court decision, JG St. Louis West Limited Liability Co. v. City of Des Peres (see summary of case), brought to the committee's attention the need to review and possibly re-write various elements of the TIF law as it relates to the "but-for" test, the definition of "blighted area" and inclusion of parking garages and other associated structures in TIF projects. The findings suggest a concern that standards for the courts to use in determining whether there is compliance with the TIF statutes may not be easy to determine, based upon the language in Chapter 99, RSMo. This language, especially as it relates to the definition of "blight" and the "but-for" test may need revision to provide the degree of clarity that will enable the courts to deduce appropriate standards.

CONCLUSION

The Committee does not make specific recommendations on the individual aforementioned problems and concerns, but does recommend the filing of legislation in the upcoming session to address and further the discussion about these issues.